

Chapter 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits MSHDA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and MSHDA-established requirements.

All units must pass HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS.

HUD also requires MSHDA to determine that rents for units under the HCV program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and MSHDA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections MSHDA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies MSHDA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security

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- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

See MSHDA HQS Inspection Manual, Exhibit 8-3; and

MSHDA Lead-Based Paint Manual, Exhibit 8-4.

Participant Preference Items

HUD requires MSHDA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, MSHDA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered participant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary, to ensure the likelihood of restoration, may require the participant to pay a reasonable amount into an interest-bearing escrow account over a reasonable period of

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time. The interest in any such account accrues to the benefit of the participant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

MSHDA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to MSHDA for review.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

MSHDA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice for families. HUD approval is required for variations to the HQS. HUD approval is not required if MSHDA variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

MSHDA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

MSHDA Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

MSHDA Policy

MSHDA will follow its Housing Quality Standards manual (Exhibits 8-3 and 8-4) when performing inspections on assisted units.

8-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires MSHDA to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of MSHDA notification.

MSHDA Policy

The following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit

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- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Structural hazard including imminent structural collapse
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Any electrical hazard within the reach of family members that poses a risk
- Absence of a heating system that can maintain a temperature of 68 degrees, when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable or missing smoke detectors (alarms that are chirping, warning the battery is low, are considered inoperable and thus a life-threatening condition even if the device is hardwired and has a battery backup)
- Inoperable or missing carbon monoxide detector (alarms that are chirping, warning the battery is low, are considered inoperable and thus a life-threatening condition even if the device is hardwired and has a battery backup)
- Missing, damaged, discharged, overcharged, or expired fire extinguisher
- Open sewage in the unit
- Severely broken windowpanes that are within the reach of family members

If an owner fails to correct life-threatening conditions as required by MSHDA, MSHDA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by MSHDA, MSHDA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless MSHDA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

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- Participant paid utilities not in service
- Failure to provide or maintain appliances owned by the family.
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "Normal wear and tear" is defined as items which could not be charged against the participant's security deposit under state law or court practice.

MSHDA Policy

MSHDA will consider the family to have breached HQS when:

- tenant-paid utilities were never placed in service
- tenant-paid utilities are no longer in service
- the family obtains tenant-paid utilities in an illegal manor
- the family fails to maintain any appliances that the owner is not required to provide under the lease
- any member of the household or guest damages the dwelling unit beyond normal wear and tear and for which the security deposit does not cover

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD-LEAD LEVEL (EBLL) OR ELEVATED BLOOD LEAD LEVEL (EIBLL) [24 CFR 35.1225; FR Notice 1/18/17]

If MSHDA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, MSHDA must schedule an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation report from MSHDA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the

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dwelling unit is in violation of HQS and MSHDA will take action in accordance with Section 8-II.G.

MSHDA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets).

If MSHDA determines that a unit is overcrowded because of an increase in family size or a change in family composition, MSHDA must issue the family a new voucher, and the family and MSHDA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, MSHDA must terminate the HAP contract in accordance with its terms.

MSHDA Policy

If a family member has been approved for an extra bedroom as a Reasonable Accommodation for medical equipment, separate sleeping room for the person with a disability, or a live-in aide, MSHDA will verify at each inspection whether or not the extra bedroom is being utilized as approved in the reasonable accommodation.

Examples of improper use of the extra bedroom include but are not limited to:

- size of equipment does not warrant an extra bedroom
- no medical equipment present in the extra bedroom
- bedroom not utilized as a bedroom for live in aide
- bedroom not utilized as a bedroom for the person with a disability

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

MSHDA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* MSHDA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.

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- *Annual/Biennial Inspections.* HUD requires MSHDA to inspect each unit under lease at least annually or biennially, depending on PHA policy, to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual/biennial inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS.

Inspection Costs [Notice PIH 2016-05]

MSHDA may not charge the family for unit inspections or re-inspections [24 CFR 982.405(e)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a resinspection.

The owner may not pass the cost of a resinspection fee to the family. Resinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

MSHDA Policy

MSHDA will not charge a fee for failed reinspections.

Notice and Scheduling

The family must allow MSHDA to inspect the unit at reasonable times with reasonable notice. [24 CFR 982.551(d)].

MSHDA Policy

Both the family and the owner will be given reasonable notice of all inspections. Reasonable notice is considered to be not less than 72 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, MSHDA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits MSHDA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

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MSHDA Policy

When a family occupies the unit at the time of inspection, an authorized adult must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, MSHDA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Initial Inspections [FR Notice 1/18/17]

MSHDA may, but is not required to, approve assisted tenancy and start HAP if the unit fails HQS inspection, but only if the deficiencies identified are non-life threatening. Further, MSHDA may, but is not required to, authorize occupancy if a unit passed an alternative inspection in the last 24 months.

MSHDA Policy

The unit must pass the HQS inspection on or before the effective date of the HAP contract.

As MSHDA is participating in HUD's Uniform Physical Conditions Standards –Voucher (UPCS-V) Demonstration in Barry, Kalamazoo, and Muskegon counties, some units may be inspected using this new HUD approved protocol. UPCS-V is a new housing inspection model developed by HUD that is intended to better evaluate housing leased by voucher-assisted families. UPCS-V has been tailored to match the goals and objectives of the HCV program, by providing low-income families with informed access to the private housing market and ensuring housing assisted by HUD is safe and habitable. As part of the Demonstration, MSHDA will be required to utilize the UPCS-V inspection protocol as developed and approved by HUD.

MSHDA may elect to conduct Remote Virtual Inspections (RVI) on program units for Initial inspections to ensure program compliance. In doing so, MSHDA will follow the guidance outlined in PIH Notice 2020-31.

MSHDA will not rely on alternative inspections and will conduct an HQS inspection or UPCS-V inspection for each unit prior to executing a HAP contract with the owner.

Timing of Initial Inspections

HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

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MSHDA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 calendar days of submission of the Request for Tenancy Approval (RFTA).

If an RFTA has been received for a unit and the unit is not ready for inspection within 15 calendar days, MSHDA will deny the RFTA.

Inspection Results and Re-inspections

MSHDA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by MSHDA for good cause. MSHDA will re-inspect the unit within 5 business days of the date the owner notifies MSHDA that the required corrections have been made.

If the time period for correcting the deficiencies (or any MSHDA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, MSHDA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. MSHDA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval (HUD 52517) after the owner has made repairs, if they are unable to locate another suitable unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

MSHDA Policy

The owner must ensure all utilities are in working order, including those that the family will be responsible for paying, at the time the initial inspection is conducted. Once the unit passes the inspection, the tenant is responsible for transferring the tenant-supplied utilities in the tenant's name.

Appliances [Form HUD-52580]

MSHDA Policy

If the family is responsible for supplying the stove and/or refrigerator, MSHDA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by MSHDA. MSHDA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

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8-II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405 and 982.406; PIH Notice 2016-05]

MSHDA Policy

Effective July 1, 2018, each unit under HAP contract must be inspected biennially within 730 days of the last full HQS inspection.

MSHDA reserves the right to require annual inspections of any owner at any time.

As MSHDA is participating in HUD's Uniform Physical Conditions Standards –Voucher (UPCS-V) Demonstration in Barry, Kalamazoo and Muskegon counties, some units assisted under a HAP contract may be inspected using this new HUD approved protocol.

MSHDA may elect to conduct Remote Virtual Inspections (RVI) on program units for Biennial inspections to ensure program compliance. In doing so, MSHDA will follow the guidance outlined in PIH Notice 2020-31.

Scheduling the Inspection

MSHDA Policy

If an adult cannot be present on the scheduled date, the family should request that MSHDA reschedule the inspection. MSHDA and family will agree on a new inspection date that generally should take place within 14 calendar days of the originally scheduled date. MSHDA may schedule an inspection more than 14 calendar days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, MSHDA will automatically schedule a second inspection. If the family misses two scheduled inspections without MSHDA approval, MSHDA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]

If a participant or government official reports a life-threatening condition in which the owner would be required to repair within 24 hours, MSHDA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

MSHDA Policy

During a special inspection, MSHDA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the biennial inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled, MSHDA may elect to conduct a full biennial inspection.

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As MSHDA is participating in HUD's Uniform Physical Conditions Standards –Voucher (UPCS-V) Demonstration in Barry, Kalamazoo, and Muskegon counties, some units assisted under a HAP contract may be inspected using this new HUD approved protocol.

MSHDA may elect to conduct Remote Virtual Inspections (RVI) on program units for Special inspections to ensure program compliance. In doing so, MSHDA will follow the guidance outlined in PIH Notice 2020-31.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]

HUD requires a MSHDA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding three months. The selected sample will include (1) each type of inspection (initial, annual, biennial and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

MSHDA Policy

As MSHDA is participating in HUD's Uniform Physical Conditions Standards –Voucher (UPCS-V) Demonstration in Barry, Kalamazoo, and Muskegon counties, some units assisted under a HAP contract may be inspected using this new HUD approved protocol.

MSHDA may elect to conduct Remote Virtual Inspections (RVI) on program units for quality control inspections to ensure program compliance. In doing so, MSHDA will follow the guidance outlined in PIH Notice 2020-31.

8-II.F. INSPECTION RESULTS AND RE-INSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, MSHDA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

MSHDA Policy

When life-threatening conditions are identified, MSHDA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of MSHDA's notice.

When failures that are not life-threatening are identified, MSHDA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not

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more than 30 days from the date of the failed inspection will be allowed for the correction.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any MSHDA-approved extension), the owner's HAP will be abated in accordance with MSHDA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any MSHDA-approved extension, if applicable) the family's assistance will be terminated in accordance with MSHDA policy (see Chapter 12).

Extensions

For conditions that are life-threatening, MSHDA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, MSHDA may grant an exception to the required time frames for correcting the violation, if MSHDA determines that an extension is appropriate [24 CFR 982.404].

MSHDA Policy

Extensions will be granted in cases where MSHDA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided. (NOTE: Generally, for winter delays, repairs must be completed no later than June 15th.)

Re-inspections

MSHDA Policy

MSHDA will conduct a re-inspection by the end of the corrective period, or any MSHDA approved extension. The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, MSHDA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with MSHDA policies. If MSHDA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, MSHDA will allow the re-inspection to be rescheduled once. After that MSHDA will consider the family to have violated its obligation to make the unit

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available for re-inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

MSHDA will accept photos from the owner to document specific HQS deficiency repairs identified on the inspection form. MSHDA will determine if submitted photo is acceptable for verification of corrected deficiency.

8-II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, MSHDA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by MSHDA, HUD requires MSHDA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

MSHDA Policy

MSHDA will make all HAP abatements effective the first of the month following the expiration of MSHDA specified correction period (including any extension).

MSHDA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

MSHDA reserves the right to immediately terminate the HAP contract and issue the participant a voucher to move if the unit is uninhabitable.

In order to move with continued assistance during the abatement period, the participant must provide to both MSHDA and the owner either:

- A signed Mutual Lease Termination (MSHDA 96) if they are in their initial lease term; or
- Written 30-day notice if currently under a month-to-month lease and must be in Good Standing.

During any abatement period the participant continues to be responsible for its share of the rent. The owner must not seek payment from the participant for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

MSHDA must decide how long any abatement period will continue before the HAP contract will be terminated. MSHDA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. MSHDA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

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MSHDA Policy

The maximum length of time that HAP may be abated is 60 days. However, if the owner completes corrections and notifies MSHDA before the termination date of the HAP contract, MSHDA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by MSHDA is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by MSHDA (and any extensions), MSHDA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until MSHDA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

MSHDA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. MSHDA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy MSHDA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

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MSHDA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, MSHDA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises MSHDA will consider unit size and length of tenancy in the other units.

MSHDA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rent adjustments will be effective the first of the month following 60 days after MSHDA's receipt of the owner's request or on the date specified by the owner, whichever is later.

MSHDA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires MSHDA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct MSHDA to make a determination at any other time. MSHDA may decide that a new determination of rent reasonableness is needed at any time.

MSHDA Policy

Effective July 1, 2017, MSHDA will make a determination of rent reasonableness when there is a 10 percent or more decrease in the Fair Market Rent. Prior to this date, MSHDA will make a determination of rent reasonableness based on a 5 percent or more decrease in the Fair Market Rent as previously required by HUD.

In addition to the instances described above, MSHDA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) MSHDA determines that the initial rent reasonableness determination was in error or (2) MSHDA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance. For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

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8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires MSHDA to take into consideration the factors listed below when determining rent comparability. MSHDA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent.

MSHDA Policy

MSHDA will use Go Section 8 to determine Rent Reasonableness.

The selected comparables will display relevant information about each property, such as the requested and adjusted rents, the number of bedrooms and bathrooms, the housing type, square footage, year built, and distance from the subject unit. It also indicates the percentages of similarity and credibility to the subject property. The ideal comparables will have a high level of both similarity and credibility. In some cases, particularly in areas where there are few rental units, it may be hard to identify units that match location, building type, and the number of bedrooms. In these cases, an expanded review of the database may be required to locate units that (1) have the same number of bedrooms and building type, but cover a broader geographic range, or (2) have the same number of bedrooms and are in the same geographic location, but are in other types of buildings.

Exhibit 8-8 details how comparability is established for MSHDA.

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance. [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2011-46]

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Note: PIH Notice 2020-19, provides further guidance on the issue of what constitutes an assisted unit as follows.

Units in converted properties (a property undergoing a conversion action that triggers eligibility for a Tenant Protection Vouchers (TPV) as described below) are considered assisted if the owner chooses to continue charging below market rents by offering lower rents or other rent concessions to impacted families who do not receive a voucher. To be considered assisted, the owner must provide written notification to the PHA, including a list of the covered families, by unit number; a description and duration of the lower rent or concession; and any additional information that the PHA deems necessary to determine applicability of the policy to the property.

Upon verification of the information submitted by the owner, the PHA must exclude such units from rent reasonableness determinations until notified by the owner that either a covered family has moved from the unit or the rent paid by the family is no longer below market or subject to a rent concession, at which point the unit is no longer excluded from the rent reasonableness determination.

Converted properties include properties undergoing any of the following conversion actions:

- Housing conversion actions that occur in the Multifamily Housing Portfolios and include an owner decision to opt-out of or not renew a Section 8 project-based contract (opt-out); a prepayment of the mortgage or voluntary termination of the mortgage insurance of a preservation eligible property (preservation prepayments); a HUD enforcement action against an owner that involves termination or non-renewal of a Section 8 project-based housing assistance payments; or a HUD property disposition activity;
- Any of the conversion actions covered by Notice PIH 2019-01/H 2019-02, or successor notices, for which the property has received an award of set-aside TPVs; and
- A public housing conversion action including demolitions and/or dispositions approved under Section 18 of the 1937 Act (including demolitions authorized under de minimis authority of such Act); required conversions approved under Section 33 of the 1937 Act; voluntary conversions approved under Section 22 of the 1937 Act; and removals initiated under an awarded Choice Neighborhood Initiative and/or HOPE VI grant.

The unit must be occupied by a family who was residing in the unit on the following date (as applicable) and did not receive a TPV as a result of the conversion action:

- The date of the eligibility event of the housing conversion action;
- The later of: (a) the date that the TPV funding application is submitted to HUD by the PHA or (b) the date of the triggering event, for set-aside TPV actions; or
- The date of PIH approval of the Public Housing Conversion or the Choice Neighborhood Initiative award date.

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Other units for which an owner voluntarily charges rent that are below market to some or all tenants are not considered assisted units. PHAs should consider these units when determining rent reasonableness.

In some rental markets it is common practice for certain employees of the property management company (e.g., a resident manager) to reside in the property rent-free or at a significantly reduced rent as part of their employment compensation. Under such limited circumstances, the rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit and the PHA must not take them into account in making rent reasonableness determinations.

Rents Charged for Other Units on the Premises

By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units on the premises. The owner must provide information requested by the PHA on rents charged by the owner for other units on the premises, including the rents charged for the three most recently leased, unassisted units in the project, if the project has 4 or more units. The Request for Tenancy Approval (Form HUD-52517) includes information on comparable unassisted units on the premises.

In determining the reasonableness of rents for units located in a multifamily project that is not substantially assisted, the PHA may base its determination on the rents charged for the three comparable unassisted units identified by the owner on the RFTA. In such cases, the PHA does not have to obtain additional rent comparables in other multifamily housing in the area. Additionally, the PHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new families routinely pay higher rents than the rents that longer time families in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing families).

An owner who offers a rent concession for *unassisted* units at the property (those not qualifying as units in converted properties as identified above) must also offer them to HCV/PBV participants. The PHA must use the actual amount of the rent for such unassisted units (that is, the rent with the concession) in determining the reasonable rent amount.

For example, an HCV family is looking to rent a unit in Property A. The rent to owner is generally \$800, but the owner offers a rent credit (a rent concession) of \$100 during the first two months of occupancy. During the initial lease term, the rent amount that the PHA must use for determining the reasonable rent is \$700 for two months (\$1,400) and \$800 for the remaining ten months (\$8,000) in a 12-month period, or \$783 $((\$1,400 + \$8,000) / 12)$ per month for 12 months.

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8-III.D. MSHDA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

MSHDA Policy

MSHDA will primarily utilize Go Section 8 which will collect and maintain data on market rents in MSHDA's jurisdiction. Data sources include internet websites, newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes.

The data will be updated on an ongoing basis and rent information that is more than 12 months old will be archived in Go Section 8. Market Rent Data greater than 12 months old will not be used for eligibility but may be used for reference.

How Rents Are Determined

MSHDA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable unassisted units in the same market area. MSHDA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, MSHDA may make adjustments to the range of prices to account for these differences. The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

MSHDA uses a unit-to-unit comparison, by which the rent for a unit proposed for HCV assistance is directly compared to the rents for one or more unassisted units selected as comparables within the same market area. Geocoded maps will be used to identify the non-assisted units in closest proximity to the subject unit and unit data information will be used to select the most similar units.

In comparing rents, MSHDA must determine whether the rent to the owner is a reasonable rent in comparison to rent for other comparable unassisted units. In comparing rents, MSHDA must consider:

- Location, quality, size, unit type, and age of the contract unit, and
- Amenities, housing services, maintenance, and utilities the owner must provide under the lease.

Where comparable units differ from the unit proposed for HCV assistance, MSHDA will determine whether those differences impact rent. Where they do, MSHDA will adjust the rental value of the comparable units, up or down, based on the market value of these factors. The rent for the unit proposed for HCV assistance will be compared to the adjusted rents for the comparable units, enabling a fair, accurate, market-based determination of rent reasonableness.

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Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom). The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs). When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$1,000/month, but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$1,000 \times 11 \text{ months} = \$11,000 / 12 \text{ months} =$ actual monthly rent of \$917.

MSHDA will notify the owner of the rent MSHDA can approve based upon its analysis of rents for comparable units. The owner may dispute the rent reasonableness data within 5 business days of MSHDA's notification. The owner may submit information about other comparable units in the market area. The owner must submit any additional information within 2 business days of MSHDA's request for information or the owner's request to submit information. MSHDA will confirm the accuracy of the information provided and consider this additional information when making rent determinations.